

MAR 10 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GREGORY VANAUSDAL,

Defendant - Appellant.

No. 07-10091

D.C. No. CR-04-20215-JW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted February 26, 2008^{**}

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Gregory Vanausdal appeals from the 60-month sentence imposed following his guilty-plea conviction for transport and shipping of visual images of minors

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

engaging in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Vanausdal contends that the five-year statutory mandatory minimum sentence required by 18 U.S.C. § 2252 is unconstitutional, offending the Due Process Clause of the Fifth Amendment and the Eighth Amendment. These contentions fail because Congress had a rational basis for creating mandatory minimum sentences to combat child pornography, *see Chapman v. United States*, 500 U.S. 453, 465 (1991), and because Vanausdal's five-year sentence is not cruel and unusual, *see United States v. Meiners*, 485 F.3d 1211, 1212 (9th Cir. 2007).

We decline to address Vanausdal's remaining contention in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182-83 (9th Cir. 2000).

AFFIRMED.